

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL--CIO; AND BALTIMORE DISTRICT COUNCIL,
INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL--CIO

and

Case⁵ 5--CD--270,

RUKERT TERMINALS CORP.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
AFL--CIO

and

~~Case~~ 5--CD--271,

BEACON STEVEDORING CORP.

and

RUKERT TERMINALS CORP.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 333, AFL--CIO

and

~~Case~~ 5--CD--272

BEACON STEVEDORING CORP.

and

RUKERT TERMINALS CORP.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION,
LOCAL 333, AFL--CIO

and

~~Case~~ 5--CD--273

RUKERT TERMINALS CORP.

DECISION AND ORDER

Upon charges filed 28 April 1982 by Rukert Terminals Corp. and Beacon Stevedoring Corp. (Employers or Rukert and Beacon), and duly served on International Longshoremen's Association, AFL--CIO; Baltimore District Council, International Longshoremen's Association, AFL--CIO, and International Longshoremen's Association, Local 333, AFL--CIO, collectively the Respondents, the General Counsel of the National Labor Relations Board issued a complaint against the Respondents alleging that they had violated Section 8(b)(4)(i) and (ii)(D) of the National Labor Relations Act.

With respect to the unfair labor practices the complaint alleges in substance that on 2 March and 26 and 27 April 1982 the Respondents violated Section 8(b)(4)(i) and (ii)(D) of the Act by demanding that the Employers reassign the work of manning Rukert's new, modern bulk cargo crane to their members from Rukert's unrepresented employees. Further the complaint alleges that on 28 April 1982 the Respondents threatened and did refuse to supply stevedoring labor to be used to unload a ship for Beacon at Rukert's pier 5 facility. The complaint further alleges that the Respondents have failed and refused to abide by the Board's 19 May 1983 Decision and Determination of Dispute ¹ which awarded the disputed work to the unrepresented employees of Rukert by continuing to demand the disputed work and by failing and refusing to notify the Regional Director in writing within 10 days whether or not they would comply with the award as required thereby. On 29 July 1983 the Respondents filed an answer to the complaint admitting in part and denying in part the allegations of the complaint and denying the commission of any unfair labor practices.

¹ ILA (Rukert Terminals Corp.), 266 NLRB No. 152 (May 1, 1983), Chairman Dotson did not participate in the prior decision.

On 4 October 1983 the General Counsel filed a Motion for Summary Judgment. On 20 October 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Review of the record in this proceeding and the record of the underlying 10(k) proceeding indicate that a hearing was held pursuant to Section 10(k) of the Act at which all parties appeared and presented evidence and were allowed to cross-examine witnesses.² On 19 May 1983 the Board issued its Decision and Determination of Dispute, finding, inter alia, the existence of a jurisdictional dispute involving the Respondents and Employers Rukert and Beacon. After due consideration of the relevant factors the Board awarded the disputed work to the unrepresented employees of Rukert and determined that the Respondents were not entitled by means proscribed by Section 8(b)(4)(D) to force or require Rukert to assign the disputed work to their members. The Board further ordered the Respondents to notify the Regional Director for Region 5 in writing within 10 days from the date of the award whether or not they would refrain from engaging in the proscribed conduct.

By their denial in their answer to the complaint the Respondents seek to place in issue Rukert's status as either the "alter ego" of an employer under contract with the Respondents or that the Employers constitute a "single employer." They also allege that the Board's Decision and Determination

² The Board's taking official notice of the record in the 10(k) proceeding and reliance thereon is well settled. Electrical Workers IBEW Local 3 (Mansfield Contracting Corp.), 206 NLRB 423 (1973).

of Dispute is factually and legally erroneous and that the International is improperly cited as a respondent in this proceeding.

Review of the record in the 10(k) proceeding indicates that these issues were raised and litigated therein. As noted above the Respondents appeared in that proceeding and were provided with a full opportunity to litigate these issues. The Respondents offer no evidence that was not presented in that proceeding. It is settled that issues raised and litigated in a 10(k) proceeding may not be relitigated in a subsequent unfair labor practice proceeding, alleging violations of Section 8(b)(4)(D) which are based in part on factual determinations made in a 10(k) proceeding especially where the respondents offer nothing not previously considered.³ Furthermore we found in the 10(k) proceeding on the basis of undisputed testimony that the Respondents had demanded the disputed work, had threatened and withheld labor from the Employers in support of their demand, and had by this conduct sought to force or require the assignment of the disputed work to employees or members represented by them. On this basis we found reasonable cause to believe that the Respondents had violated Section 8(b)(4)(i) and (ii)(D) of the Act. That undisputed evidence is neither supplemented nor controverted in this proceeding and we further find that it establishes that Respondents have engaged in the conduct with an object proscribed by Section 8(b)(4)(i) and (ii)(D) of the Act.

The Respondents' answer also denies the allegation that they continued to demand the disputed work but the Respondents admit that they failed and refused to advise the Regional Director whether or not they intended to comply with the 10(k) award.⁴

³ Teamsters Local 170 (Barlette Co.), 252 NLRB 519, 520 (1980).

⁴ Iron Workers Local 433 (Plaza Glass Co.), 218 NLRB 848 (1975).

Compliance with a 10(k) award requires a good-faith intent by the particular respondent to accept and abide thereby which includes performing essentially the same acts as those required for a showing of an intent to comply with a remedial order of the Board.⁵ This showing includes, inter alia, a timely and unequivocal written statement to the Regional Director indicating such an intent as is required by the 10(k) award. In the instant case the Respondents have failed to notify the Regional Director of their intent to abide or not abide by the 10(k) award, a lack of expression which clearly does not manifest the required good-faith intent to abide by the Board's determination. In these circumstances having found on the basis of undisputed evidence that the Respondents had demanded the disputed work and that they have not expressed a good-faith intent to abide by the Board's resolution of the dispute in the 10(k) proceeding, we infer that the Respondents have not abided thereby and have continued to demand the disputed work.

We have found that the Respondents engaged in conduct proscribed by Section 8(b)(4)(D) of the Act and by not complying with the Board's 10(k) award have continued to engage in such conduct. Thus in view of these findings and the finding that the Respondents are attempting to relitigate issues raised and litigated in the underlying 10(k) proceeding and that a de novo hearing is not required and in the absence of good cause being shown for the failure to file a response to the Motion to Show Cause, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

⁵ Plumbers Local 741 (Ashton Co.), 259 NLRB 944, 946 (1982).

Findings of Fact

I. Jurisdiction

Rukert Terminals Corp. is a Maryland corporation engaged in the operation of a pier and warehousing operation in the Port of Baltimore, Maryland, where it annually provided services to companies in interstate and foreign commerce valued in excess of \$50,000.

Beacon Stevedoring Corp. is a Maryland corporation engaged in providing stevedoring services to customers engaged in interstate and foreign commerce and it annually provided services to customers in interstate and foreign commerce valued in excess of \$50,000. We find that Rukert and Beacon are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all times material hereto the Respondents and the Employers have had a jurisdictional dispute concerning the work of operating and maintaining a new, modern grab bucket bulk cargo crane involved in the unloading of ships of bulk cargoes, such as ores, minerals, potash, and fertilizers at Rukert's pier 5 in the Port of Baltimore, Maryland. In and about the months of March and April 1982, in furtherance of this dispute, the Respondents threatened the Employers that they would shut down their operations and refused to supply stevedoring labor to Beacon. In so doing the Respondents have threatened, coerced, and restrained the Employers in an effort to force the Employers to reassign the disputed work from the unrepresented employees of Rukert to their members.

On 19 May 1983 the Board issued its Decision and Determination of Dispute (266 NLRB No. 152) finding that the unrepresented employees of Rukert are entitled to perform the disputed work and that the Respondents were not enti-

tled by means proscribed by Section 8(b)(4)(D) of the Act to force or require the Employer to reassign the work to their members.

By failing and refusing to notify the Regional Director for Region 5 in writing of their intent to comply with the above-mentioned Decision and Determination of Dispute, the Respondents have not complied with the award and have continued to demand the disputed work.

Conclusion of Law

By failing and refusing to comply with the Board's Decision and Determination of Dispute and by continuing to demand the disputed work thereby threatening, coercing, and restraining the Employers with the object of forcing or requiring the Employers to reassign the disputed work to members, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(D) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondents, International Longshoremen's Association, AFL--CIO; Baltimore District Council, International Longshoremen's Association, AFL--CIO; and International Longshoremen's Association, Local 333, AFL--CIO, their officers, agents, and representatives, shall

1. Cease and desist from refusing to comply with the Board's Decision and Determination of Dispute and from threatening, coercing, or restraining Rukert Terminals Corp. and Beacon Stevedoring Corp. where the object thereof

is to force or require the Employers to reassign the work of operating its bulk cargo crane to employees or members represented by them rather than to Rukert's unrepresented employees.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at their facilities in Baltimore, Maryland, copies of the attached notice marked "'Appendix.'"⁶ Copies of the notices on forms provided by the Regional Director for Region 5, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 5 with signed copies of such notice for posting by the Employers if willing in places where notices to employees are customarily posted.

⁶ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

Dated, Washington, D.C.

28 March 1984

Donald L. Dotson,

Chairman

Don A. Zimmerman,

Member

Robert P. Hunter,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to comply with the Board's Decision and Determination of Dispute and threaten, coerce, or restrain Rukert Terminals Corp. and Beacon Stevedoring Corp. where an object thereof is to force or require Rukert Terminals to reassign work of operating and maintaining its bulk cargo crane to our members rather than to the unrepresented employees of Rukert Terminals.

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL--CIO

(Labor Organization)

BALTIMORE DISTRICT COUNCIL,
INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, AFL--CIO

(Labor Organization)

INTERNATIONAL LONGSHOREMEN'S
ASSOCIATION, LOCAL 333, AFL--CIO

(Labor Organization)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Candler Building, 109 Market Place, Fourth Floor, Baltimore, Maryland 21202, Telephone 301--962--2772.